IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 202 of 1993
With
CROSS OBJECTION No. 34 of 2006
In FIRST APPEAL No. 202 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)

Versus

MINOR HABSAKHATUN HUSENBAX THR'GUARDIAN HUSENBAX N MOMIN - Respondent(s)

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Appearance :
MR. MD PANDYA WITH MS. MAYABEN DESAI for Appellant(s) : 1,
MR BS PATEL WITH MR CHIRAG B PATEL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in this appeal filed under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) is to the judgment and award dated 3.8.1992 rendered in MACP No. 82 of 1991 by the Motor Accident Claims Tribunal (Aux.) District Kheda at Nadiad ('the Tribunal' for short) by which the claim petition filed under Section 166 of the Act by the respondent/original claimant ('claimant' for short) Minor Habsakhatun Husenbax, through her guardian and next friend, Husenbax Noorbhai Momin, of Changa, District

Kheda, against the appellant-Gujarat State Road Transport Corporation ('GSRTC' for short) to recover total compensation of RS.15,00,000/- on account of the injuries sustained by the claimant which have resulted into permanent partial disablement i.e., paraplegia in a vehicular accident which took place on 18.3.1989 at Kadi Bus Stand by a bus belonging to GSRTC, has been partly allowed and thereby the claimant has been awarded total compensation of Rs.6,12,000/- with running interest at the rate of 12% per annum from the date of the application till realization together with proportionate cost and accordingly GSRTC has been directed to pay the said amount within two months from the date of the award. The claimant has also challenged the said judgment and award by filing Cross-Objection contending that the amount awarded to the claimant by way of compensation is very meagre.

2. The factual matrix of the case of the claimant, briefly stated, is as under:

2.1. An unfortunate accident took place on 18.3.1989 at Kadi Bus Stand, involving a bus belonging to GSRTC, which is, of course, disputed by the GSRTC, which has claimed all the enjoyments and comforts of life of a tender aged girl of 3 years, named Habsakhatun Husenbax, even before starting her academic career. On the fateful day, the minor girl, along with her parents and relatives, had gone to a pilgrimage at Kadi Dargah. While returning at around 5.30 P.M., they were standing near the gate of ST Bus Stand, Kadi. Her parents had gone for shopping and the minor was standing with her relatives. At that time a bus belonging to GSRTC, driven by its driver, in an excessive speed, came near the ST Stand gate and dashed with the minor girl as a result of which the minor girl got multiple injuries mainly on her spinal cord and with the result of the injuries stool and urine had also passed which shows how violent the impact was. Ihe registration number of the S.T. bus was not located because the injured was to be removed for treatment immediately to Bhagyoday

General Hospital at Kadi where she was treated initially and was removed in a jeep to Ankoor Hospital at Kalol. Thereafter she was removed to Nadiad Hospital in the said jeep and at around 9 P.M. they reached Utkarsh Hospital at Nadiad where she was admitted and thereafter the doctor advised the parents of the injured to consult Dr. Thakore, a neuro-surgeon, at Ahmedabad. The injured minor was removed to Dr.Thakore's Nursing Home at Ahmedabad and she was admitted in the said hospital. She was again brought for treatment at Methodist Hospital, Nadiad. The minor was treated at Methodist Hospital, Nadiad, Dr. Thakore, a Neurosurgeon of Ahmedabad, Dr. Dinubhai and Dr. Ranjitbhai Acharya of Ahmedabad, Dr. Baxi of Anand, etc.

2.2. It was further case of the claimant that the injured girl was taken to Christian Medical College and Hospital, Vellore, Tamil Nadu, for treatment on 16.6.1989 and they reached Vellore on 17.6.1989. The injured was admitted in hospital as an indoor patient on 20.6.1989 and

many tests of spinal-cord were conducted upto 28.6.1989. The injured sustained serious injuries and suffered from paralysis/paraplegia below the nipple. She is totally bed ridden and there are no chances of further improvement. Therefore, according to the claimant, bus of GSRTC was involved in the accident and as a result of the rash and negligent driving of the bus of GSRTC by it's driver, the accident in question took place.

2.3. Putting forth the claim for compensation of Rs.15,00,000/-, it was the case of the claimant that they had gone to Vellore for further treatment and they spent a sizable amount for the treatment of the injured. In spite of that the injured has become totally bed-ridden and is totally dependent upon others. Therefore, she had suffered great pain, shock and sufferings and she has been permanently deprived of enjoyment and amenities of life. One person is constantly required to look after her. Her father and mother both were attending her. It was also

the case of the claimant that looking to the nature of injuries sustained by her, she might be required to be taken to foreign country for treatment. The injured had to undergo difficulties in her day-to-day life and she had suffered a lot of mental pain, shock and suffering and her future is in darkness. So far as education, earning capacity and marriage are concerned, she has suffered a lot and she is not in a position to earn for her livelihood and her marriage prospects is also bleak. Therefore, on all these major heads, the claimant claimed through her guardian and next friend, a total compensation of Rs.15 lakhs from the GSRTC with cost and interest.

2.4. It may be noted that originally the claim was preferred for Rs.9,999/- which was subsequently enhanced to Rs.5 lakhs and thereafter it was again enhanced to Rs.15 lakhs.

2.5. The claim petition was contested by GSRTC by filing reply affidavit to the claim petition

at Exs.8 and 20 wherein, inter alia, it was denied that the ST bus was at all involved in the accident. It was also denied that the accident in question took place on 18.3.1989 near the gate of ST bus stand, Kadi. According to GSRTC, the accident had never been reported to the ST Depot either by her relatives or any person standing nearby the gate. According to GSRTC, it has been wrongly implicated in the accident with view to get compensation from it. According to it, it might be true that injured might have suffered injuries in a vehicular accident but it was not by the bus driven by the driver of GSRTC. If at all the accident had ever taken place because of the rashness or negligence on the part of the driver of the bus involved in the accident, either the relatives of the claimant or somebody must have filed complaint in the nearest police station or at least before the Depot Manager immediately. Therefore, in sum and substance, involvement of the bus owned by GSRTC in the accident has been denied by it.

2.6. With regard to the quantification of compensation, it was denied that the injured has sustained so-called paralytic-paraplegic injuries because of the accident. Medical certificates, more particularly, radiogram and myelogram reports, indicate that the injured has not suffered any paralysis-paraplegia and X-rays of spinal cord and myelogram were normal. Therefore, the amount claimed under the head of mental pain, shock and suffering is also denied. Similarly, the amount claimed under various heads, including special diet, transportation, attendance charges, etc., were also denied. It was also denied that in future the injured has to spend a lot of money for her treatment. The expenses to be incurred for medical treatment in future was also denied. It was also denied that the injured has suffered 100% disability and, therefore, there was no question of considering future loss of income. It was the case of GSRTC that since the bus owned by the GSRTC was not involved in the accident, there was no question of considering rashness or negligence on the part of the driver

of the GSRTC. Therefore it was prayed to dismiss the claim petition with cost since the bus owned by GSRTC was never involved in the accident and the claim made was every excessive, exorbitant and inflated.

2.7. The Tribunal, after considering the oral as well as documentary evidence adduced and produced on the record by both the parties and the submissions advanced at the bar by the learned advocates for the parties, came to the conclusion that though the accident was not immediately reported to the police or to the GSRTC, the accident did take place and the accident was a result of rash and negligent driving of the bus owned by GSRTC by its driver and as a result of the accident, the minor girl sustained very serious injuries which ultimately resulted in paralysis/ paraplegic condition and, therefore, she has suffered 100% disability for the whole of her life.

2.8. After having held that the driver of the

bus owned by GSRTC was rash and negligent in driving the bus at the time of accident, the Tribunal has examined the quantum of compensation claimed under various heads and after considering the medical evidence, determined the compensation under various heads as under:

Rs. 75,000/- for pain, shock and sufferings.
Rs.2,00,000/- for past medical treatment.
Rs. 12,000/- for medicines.
Rs. 15,000/- for nursing, care and attendance.
Rs. 15,000/- for transport charges.
Rs. 10,000/- for special diet.
Rs. 20,000/- for future medical treatment.
Rs. 25,000/- for amenities of life.
Rs.2,40,000/- for future loss of income.

Rs.6,12,000/- Total
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The Tribunal, therefore, awarded Rs.6,12,000/- with running interest at the rate of 12% per annum from the date of the application till realization and proportionate costs, which has

given rise to instant appeal at the instance of the appellant-GSRTC challenging the same as excessive, exorbitant and inflated and Cross-Objection at the instance of the claimant-Habsakhatun Husenbax, through her guardian and next friend Husenbax Noorbhai Momin, challenging the same as being very meagre.

3. Mr. M.D. Pandya, learned advocate with Ms. Mayaben Desai, learned advocate, for GSRTC raised the following contentions:

(i) The claimant has failed to prove by cogent evidence that the bus of the GSRTC was involved in the accident. When the claimant has failed to prove the involvement of the ST bus in the accident, question of considering any rashness or negligence on the part of the driver of the GSRTC does not arise. However, the Tribunal, on conjectures, surmises and assumptions wrongly held that the bus of GSRTC was involved in the accident and the driver of the GSRTC was negligent in driving the bus.

(ii) So far as quantum of compensation is concerned, the Tribunal has considered the medical certificates which were not exhibited during the course of evidence. On the contrary, those certificates produced by the claimant, particularly the X-rays and myelograms, in terms certify that the injured had never become paralytic/paraplegic because of the injuries sustained by her because the nexus between the accidental injuries and paralysis/paraplegia has not been established. There is variance among the certificates produced by the claimant. However, the Tribunal has wrongly relied upon those certificates for coming to the conclusion that the injured has become paralytic/paraplegic because of the accidental injuries and has become cripple and permanently disabled. Therefore, the quantum of compensation has been wrongly calculated and exorbitant amount has been awarded.

(iii) It was also contended that the Tribunal

has erroneously believed the documents produced by the claimant which are not proved and not exhibited. The Tribunal has relied upon non-proved and non-exhibited documents for coming to the conclusion that the driver of the bus owned by GSRTC was involved in the accident and as a result of the rash and negligent driving on the part of the driver of the bus owned by GSRTC the accident took place as well as the injured suffered paralytic/paraplegic injuries which have resulted into permanent total disablement.

In support of both the aforesaid contentions, Mr. Pandya, learned advocate for GSRTC, has taken us through the testimonial collections. According to him, the impugned award involving the bus of the GSRTC in the accident as well as the quantum of compensation determined by the Tribunal deserves to be quashed and set aside by allowing the appeal and thereby dismissing the claim petition filed by the claimant and also the Cross-Objection. He, therefore, urged to allow the appeal and to dismiss the cross-objection

filed by the claimant.

4. Per contra, Mr. BS Patel, learned advocate for the claimant, has made following submissions:

(i) There are voluminous evidence which would unequivocally establish that the bus of GSRTC was involved in the accident. The accident had taken place near the gate of Kadi ST bus stand. The driver of the ST bus knocked the minor down and as a result of the impact she sustained serious injuries. The impact was so forceful that the minor girl passed urine and stool. Immediately after the accident, she was taken to the nearest hospital at Kadi and thereafter from one hospital to another and therefore they could not lodge the complaint with the police or with the Depot Manager of GSRTC immediately. According to him, for proving the involvement of the ST bus in a vehicular accident it is not always necessary to lodge a complaint or FIR. According to him, of course, a complaint or FIR has a persuasive value but if there is oral evidence and supporting

documentary evidence suggesting that the bus of GSRTC was involved in the accident there is no reason to disbelieve or discard such piece of evidence. Therefore, the Tribunal has rightly held that the claimant has proved that the bus of GSRTC was involved in the accident and as a result of the rash and negligent driving on the part of the driver of the ST bus the accident had taken place.

(ii) So far as the quantum of compensation awarded by the Tribunal is concerned, according to him, there is voluminous evidence which unequivocally suggests that as a result of the accident, a girl of tender age of three years has practically become cripple and she has become paralytic and paraplegic and she will remain totally disabled for the whole of her life. There is medical evidence to the effect that as a result of the trauma of spinal-cord the injured girl has become paralytic/paraplegic, and therefore, the amount awarded under various heads is on the contrary on the lower side and,

therefore, the claimant has filed cross objection for enhancement of the award.

On the aforesaid premise, it is submitted by him that the impugned award is on lower side so far as the quantum of compensation is concerned and this court may enhance the compensation. According to him, the appeal filed by GSRTC lacks merit and therefore the same may be dismissed and the cross-objection filed by the claimant may be allowed by enhancing the amount of compensation. He, therefore, urged to pass appropriate orders in this regard.

5. We have considered the submissions advanced by Mr. MD Pandya, learned advocate with Ms. Mayaben Desai, learned advocate for GSRTC and Mr. BS Patel, learned advocate with Mr. Chirag B. Patel, learned advocate for the claimant. We have also perused the impugned award and the paper book containing testimonial collections in the form of oral as well as documentary evidence

supplied by Mr. BS Patel, learned advocate for the claimant and considered the decisions cited at the bar.

6. To prove the case against GSRTC with regard to involvement of the bus owned by it in the accident, the claimant first relied upon the oral testimony of Husenbax Noorbhai Momin, Ex.52 at page 86 of the paper book. He has, inter alia, testified that on 18.3.1989 the accident took place at the gate of Kadi Bus Stand. On that day they had been to pilgrimage to Kadi Dargah along with his wife, daughter and sister-in-law. While returning on the same day in the evening, they were standing near the ST Bus Stand, Kadi. He and his wife had gone to a shop opposite ST Depot for some purchase. At that time his sister-in-law Zubeda and Nazma and Habsakhatun were standing outside the ST Bus Stand. His brother Mahmad had gone for chewing betel (pan). The shriek of his daughter attracted his attention towards her and at that time he saw a ST bus was passing. People assembled there. His daughter was found lying

down covered with dust. There was distance of 15 ft. between him and his daughter. His sister-in-law Zubeda told that the ST bus knocked his daughter down. He immediately took her daughter to Bhagyoday General Hospital, Kadi, in an auto rickshaw. He had informed the doctor that his daughter received injuries because of the accident caused by ST bus. The doctor treated her.

During his cross examination he clarified that since they were concentrating on the treatment of the injured they could not lodge complaint in the police immediately. However, prior to going to Vellore he had written a letter to DSP Mehsana as a result of which the DSP recorded statements. He had also shown the place of the accident to the police. It may be noted that during cross-examination he admitted that he did not remember the registration of the bus nor did he know the route as well as the name of the driver of the bus. He also admitted that he had not contacted any of the officers of the GSRTC.

He also admitted that though he had heard the cry of his daughter which attracted his attention towards the place of accident he had not seen the dashing of the bus with his daughter. He also stated that the police had recorded the statements of witnesses. According to this court, this witness withstood the test of cross-examination and there is no reason to disbelieve the deposition given by him on oath.

7. To corroborate the said evidence, the claimant has also relied upon the complaint dated 14.6.1989 sent by the father of the injured claimant to DSP, Mehsana, Ex.53, which is at pages 92-93 of the paper book. This complaint was sent after three months of the occurrence. A xerox copy of the complaint sent by him was shown to him and it was a certified copy and he has produced it as mark 27/1 which is at Ex.53. It was produced along with the true copy of the panchnama as mark 27/2, which is at Ex.54. From the close scrutiny of the complaint, it is seen that the claimant had also explained the reason

why immediately complaint could not be lodged. It was stated therein that for three months they were busy in giving treatment to the injured minor and therefore they were mentally broken down. It was also stated by him that they have immediately informed the doctors who treated the minor injured about the accident and the involvement of the bus of GSRTC in the accident and he had categorically stated before the doctors that the accident had taken place by the bus of GSRTC at the gate of ST Depot, Kadi.

8. To further corroborate the evidence of Husenbax Noorbhai Momin about the involvement of the ST bus in the accident, the claimant has also examined and relied upon the evidence of Zubedabibi, Ex.58, at page 99 of the paper book. She, inter alia, testified that on 18.3.1989 they had gone for pilgrimage at Kadi Dargah. The accident had taken place near the gate of ST Depot Kadi. At that time Habsakhatun was with her. The bus came from the ST stand without blowing horn and in an excessive speed. They were

standing near the second gate on a side. As the bus dashed with the minor girl, she fell down and became unconscious. Urine and stool passed as a result of the impact. People assembled there. Meanwhile, Husenbax and his wife, i.e., father and mother of injured Habsakhatun, came there and she informed them about the accident. Thereafter they took the injured in an auto-rickshaw to a hospital at Kadi and thereafter from Kadi to a Hospital at Kalol and then to Nadiad. This witness was also subjected to cross-examination by the learned advocate for the GSRTC. In her cross-examination she denied all the suggestions put to her about non-involvement of the ST bus in the accident. She reiterated that accident did take place by the rash and negligent driving on the part of the driver of the ST bus while taking the bus from ST stand without blowing horn and in an excessive speed. This witness withstood the test of cross-examination and there is no reason to discard her oral testimony so far as the involvement of the ST bus in the accident is concerned.

9. To fortify that the bus of the GSRTC was involved in the accident, the claimant also relied upon the first MLC certificate issued by Bhagyoday General Hospital, Kadi where after the accident immediately the injured was taken for treatment. This medical certificate is at page 96 of the paper book. On a perusal of the said certificate it is seen that the doctor has certificated that Habsakhatun, resident of Vanakbori, aged about 3 years, was brought to the hospital on 18.3.1989 at 5.20 P.M. following alleged history of ST bus accident. Thereafter she was referred to orthopedic surgeon for further treatment. The concerned doctor wrote a note dated 81.3.1989 to the orthopedic surgeon wherein also complaint of vehicular accident was noted. Therefore, these two documents are first in point of time from the hospital where immediately after the accident the injured was taken for treatment and history of vehicular accident involving ST bus near the Bus Stand, Kadi, was noted.

10. The claimant also relied upon deposition of Dr. Shantiswarup, Ex.62, page 101 of the paper book to prove the involvement of the ST bus in the accident. Dr.Shantiswarup testified that on 18.3.1989 Habsakhatun was brought to his hospital for treatment. It was informed to him that accident had taken place at Kadi Bus Stand by ST bus. In cross-examination also he narrated similar version and stated that in his case paper he had mentioned about the accident caused by ST bus. He had also issued a certificate dated 25.4.1989 which is on record at page 104 of the paper book. A perusal of the said certificate shows that he had mentioned in the said certificate about the alleged vehicular accident at Kadi ST Depot. Therefore there is no reason to discard the oral testimony of Dr. Shantiswarup as well as the certificate issued by him.

11. It was the case of GSRTC that the bus of the ST Corporation was never involved in the accident. They, therefore, examined Govindbhai

Ajrabhai Tapothan, Ex.71, at page 108 of the paper book. He was at the relevant time traffic controller at Kadi Bus Depot. He testified that his duty was to register the buses that come to the stand and he testified that driver of the bus has to report about accident to the stand-in-charge, and the same has to be recorded in their chart. He also produced the register wherein on 18.3.1989, the day on which the alleged accident took place, no such report was recorded. In cross-examination he admitted that if the driver of the bus reports about accident then and then only he has to register it and if the driver of the ST bus did not declare it then he has not to record in register.

12. On over all appreciation of the evidence adduced by the claimant and the complaint and medical certificates as well as the evidence of the witness of the GSRTC, it is clear that the accident was not reported by the claimant immediately either to Depot Manager or to the police because they had immediately rushed to

hospital for giving treatment to the injured girl and from one hospital to another they rushed and approximately for three months they were busy in giving treatment to the injured at Kadi, Kalol, Nadiad, Ahmedabad, then again at Nadiad, Vellore at Tamil Nadu and again at Nadiad. Therefore, there is no reason to disbelieve that part of their evidence.

13. It may be appreciated that after sending the written complaint to DSP, Mehsana certain officers visited Kadi Bus Depot, started investigation and recorded statement of so many witnesses and ultimately filed A summary. Filing of A summary would mean that the accused could not be traced and not that the complaint was false. When such an accident had happened and when the bus was moving it would be very difficult to get the registration number of the bus. It is also required to be noted that once parents and relatives of the injured find the injured minor sustained injuries first they would take the injured to hospital for treatment and

naturally they would not go for filing complaint to police or to report to the Depot Manager about the said accident.

14. Similar question arose before the High Court of Himachal Pradesh in the case of Brestu Ram v. Anant Ram and others, 1990 ACJ 333, wherein a pedestrian standing away from the metalled portion of the road was hit by the bumper of a fast moving truck and was injured. The respondents denied that the vehicle was involved in the accident as it was elsewhere at the time of accident. An eye witness deposed to have noted the number and name of the owner from the vehicle. The eye witnesses deposed about the rash driving of the truck and that the truck driver stopped the truck for a couple of minutes after hitting the injured and then ran away with the truck. There was no evidence to the contrary. The evidence produced by the respondents to establish that the truck was elsewhere is unbelievable. The accident was not reported to the police. The Tribunal found that it has not been established

that the accident took place with the said truck. However, the High Court set aside the tribunal's finding and held that the accident was caused by the rash and negligent driving of the truck.

15. Applying the principles laid down by the High Court of Himachal Pradesh in the above referred to judgment to the facts of the present case, there is voluminous evidence of the eye witnesses as well as doctors who initially treated the injured as well as documentary evidence in the form of medical certificates issued by the doctors and also complaint sent by the father of injured to DSP Mehsana after three months wherein the police has recorded that accident had taken place but the name of the driver was not traceable and, therefore, A summary was sought for.

16. Thus, the totality of the evidence on record leads to the conclusion that the bus of the ST Corporation was very much involved in the accident and, therefore, the burden is shifted to

the driver of the bus to prove that he was not negligent or rash in driving the bus at the time of the accident. It is an admitted position that injured along with his aunt was standing near the gate of the ST bus depot and at that time driver of the ST bus came from the bus stand driving the bus in a rash and and negligent manner and knocked the girl down and as a result of which she suffered serious injuries and this itself speaks the volumes of the negligence on the part of the driver of the ST bus in driving the bus involved in the accident. Not only the driver of the bus was rash and negligent in driving the bus but he also failed in discharging his duties by not reporting the said incident to the Depot Manager and drove away from the place of the accident. Therefore it has to be deduced that the bus of GSRTC was involved in the accident in which the minor girl Habsakhatun got injuries and the accident was the result of rash and negligent driving of the ST bus by its driver and as a result of the mishap a girl of tender age of three years who had not even started her

academic career suffered serious injuries and permanent partial disability for the whole of her life. Therefore, the finding of the Tribunal that the ST bus was involved in the accident and the accident took place because of the rashness and negligence on the part of its driver has to be affirmed. According to us, the Tribunal has not committed any illegality in coming to the conclusion that the bus of the ST corporation was involved the accident and its driver was rash and negligent in driving the bus at the relevant time. We, therefore, confirm the said finding.

17. Having held that the Tribunal was justified in holding that the bus of the GSRTC was involved in the accident and on account of rashness and negligence on the part of the driver of the GSRTC in driving the bus owned by GSRTC the unfortunate accident took place, now the next question which falls for determination of this Court is as to whether the Tribunal has rightly determined the quantum of compensation and awarded the just and reasonable compensation or

compensation awarded by the Tribunal is on higher side, excessive, exaggerated or inflated as contended by Mr. Pandya, learned advocate who has filed appeal or is it on lower side and very meagre compensation has been awarded to the victim of the road accident who suffered serious injuries and has become practically crippled as contended by Mr. BS Patel, learned advocate for the claimant, who has filed cross-objection.

18. It is settled position of law that the victim of a road accident should be awarded just compensation which should not be punitive to the parties liable nor a source of profit to the victim of the road accident. The victim of the accident cannot be permitted to make fortune out of misfortune and sympathy for claimant should not be allowed to affect the calculation of damages, nor the award should be extravagant and oppressive.

19. It is not in dispute and cannot be disputed that in view of the conclusion arrived

at by the Tribunal regarding rashness and negligence on the part of the driver of the bus owned by GSRTC and as a result of which the accident occurred and the claimant sustained injuries and therefore the claimant is entitled to (1) special or pecuniary damages and (2) general or non-pecuniary damages. What damages should be awarded to the claimant who has suffered permanent partial disability in an accident, is a vexed question. It is really difficult to assess the exact amount of compensation which would be equivalent to the pain, sufferings and loss suffered by the claimant. It can never be full compensation but it must be fair and just. No amount of money can restore the physical frame of the claimant yet the Court has to make an effort to assess compensation which may provide relief to the injured.

20. In this regard, a reference can be invited to the decision rendered by the Bombay High Court in Maharashtra State Road Transport

Corporation v. Rajrani, 81 BLR 241 wherein it is observed thus:

> "That the standard must be an objective standard and although it may involve some guesswork, hypothetical considerations, speculation and conjectures and mere considerations of sympathy and solatium should not enter into assessment of damages appear to be relevant principles applicable to personal injuries."

21. A reference may also be invited to the judgment of the Supreme Court in the case of C.K. Subramonia Iyer v. Kunhi Kuttan Nair, 1970 ACJ 110(SC) wherein it is observed thus:

> "In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture or surmises to some extent is inevitable."

22. In the case of Vinod Kumar Shrivastav v. Ved

Mitra Vohra, 1970 ACJ 189 (MP), the Madhya Pradesh High Court has held thus:

> "Quantum-Principles for assessment-compensation must be reasonable-It should be assessed with moderation-Regard must be had to comparable cases-The sums awarded should be conventional-These rules should be followed to achieve uniformity. It is only by adherence to these self-imposed rules that the Courts can decide like cases in like manner and bring about a measure of predictability of their awards. These considerations are of great importance if administration of justice in this field is to command the respect of the community."

23. From these decisions referred to above, it would be clear that the emphasis is on the three-fold principles that (1) the award should be moderate, just and fair and it should not be oppressive to the respondent, (ii) the award should not be punitive, exemplary and extravagant

and (iii) as far as possible similar cases must be decided similarly so that the community of public at large may not carry the grievance of discrimination.

24. At this stage it would be also advantageous to refer to the prefatory note made by a Division Bench of this Court in the judgment rendered in the case of Ashish Jivrajbhai v. Ashwinbhai Himatlal, 1982 (2) GLR 290. In the said judgment, speaking for the Division Bench, P.D. Desai, J., has observed as under:

> “We must start this judgment with a frank confession. These are cases in which Judges often feel intensely, even if they do not say so expressly, that it is quite impossible to make adequate compensation in terms of money for the tragic consequences of the injury lasting for the life-time of the surviving victim of an accident, for, money cannot renew a physical frame that has been battered and shattered and alleviate the pain and

suffering and restore the lost pleasure and enjoyment of life. The feeling is bound to be all the more deep and earnest when the victim is a young boy, the course of whose whole life is fundamentally affected as a result of the disabilities flowing from the accident. The Court must still assess the compensation, however, bearing in mind all the relevant circumstances of the case, as they are known upto the time of the trial, and, as far as they can for the future be reasonably foreseen, guided by the overall consideration that the injured person should be given a sum – even if it appears to some minds to be 'daunting in its immensity' – which would ensure that he would not, within reason, want for anything that money could buy and would be able to live for the rest of his life in comfort and enjoyment comparable as nearly as possible with that which would have been his but for the accident”.

25. In the present case, the injured minor

Habsakhatun, through her guardian, has claimed total compensation of Rs.15 lakhs on the ground that she has sustained grievous injuries in the accident which has resulted in total permanent disablement. In this regard, we have to again advert to the oral testimony of Husenbax, father and guardian of the victim - minor girl Habsakhatun.

26. In his deposition, Husenbax has deposed that after the accident, he took her to Bhagyoday General Hospital. After preparing case papers she was admitted. He has further deposed that he told the doctor about the occurrence of the accident involving ST bus. The doctor gave treatment. The doctor advised to take her to orthopedic surgeon and gave a reference note. On the same day, in a hired jeep, all of them took the injured to Kalol and straightway went to Ankoor hospital. The doctor told that the patient needed admission in hospital and he being an outsider, he may take her to his place. In the same jeep they all went to Nadiad with the

injured girl. He has further deposed that they took her to Utkarsh Hospital, Nadiad where she was admitted, kept as indoor patient for two days and X-rays were taken and thereafter advised to consult neurosurgeon and referred to Dr. PR Thakore, Ahmedabad.

He has further testified that in a hired rickshaw he took the girl to Ahmedabad at Dr. Thakore's hospital. There she was kept as indoor patient for about seven days. The doctor informed that the portion below the chest has become numb and she will have no control over discharge of her stool and urine and there may not be any change in future.

It is further deposed by him that after discharge from the hospital, the injured was taken to Mission Hospital, Nadiad. There she was given treatment for one and half months but there was no improvement. The doctor informed him that they had written to Vellore Hospital and after receiving reply from Vellore Hospital they may

take the patient to Vellore. After about 15-20 days the appointment was received and thereafter he, along with his wife, his brother and sister-in-law and the injured daughter went to Vellore and there she was admitted as indoor patient for 20 days and given treatment. But no improvement was found. She was given advise to take treatment. From there she was taken to Mission Hospital, Nadiad. The doctor taught them how to get the excretion of urine and stool done and his wife learned it and she was helping his daughter in this regard.

He has further stated in his deposition that his daughter was completely bed ridden. She was studying in first standard. They were taking her to the school by lifting her. His wife was taking the stool and urine of the child two times at two recess time. In addition to Vellore Mission Hospital they had taken their daughter to so many other doctors. They had consulted Dr. Balkisan. The doctor has issued the disability certificate after examining his daughter. For medicines and

medical expenses about Rs.20,000 was spent. Bill for Rs.12,000/- were sent for reimbursement to the Government and in piece-meal he received about Rs.7,500/- For conveyance, food, etc., about Rs.10,000/- was spent. For about one and half years the injured was given only liquid food. Milk and fruits were given. Every day Rs.20/- were spent. Even on the day of recording his evidence, mainly liquid food was given to her.

He has further further deposed that he is an Engineer having qualification of Diploma in Mechanical Engineering and he was working as an operator with G.E.B. Vanakbori and his salary was Rs.3,000/- He has further stated in his deposition that for the treatment of his daughter he had taken leave of various duration for a period of four months. He has deposed that he had a desire to educate his daughter upto double graduation. He has also deposed that he was thinking of taking her to America for treatment and for that the expenses may be Rs.20 lakhs.

The certificate issued by the Kadi Hospital is produced as mark 27/3. He has testified that the said certificate was written in his presence and it was signed before him and the said certificate is produced at Ex.55. Mark 27/4 was given by him and it is at Ex.56. The certificate issued by Dr. Jasani is produced as mark 27/10 and mark 27/11 was also given by him. Mark 27/13 to 27/15 were the prescriptions and certificates issued by Dr. Pradhyot Thakore. Mark 27/16 is the certificate issued by Dr. Dinubhai Patel and mark 27/17 is the treatment card of Mission Hospital. Mark 27/19 is the certificate issued by Dr. Baxi and mark 27/20 is the note written for the doctor. Mark 27/22 is the treatment card for the treatment taken from Ahmedabad Civil Hospital. Mark 27/23 is the letter written by Dr. Khristmukti of Methodist Hospital to him which is at Ex.57. Mark 27/25 is the discharge card issued by Vellore Hospital. Mark 27/26 is the correspondence with G.E.B. doctor. Mark 27/29 is the xerox copy of the letter written to the doctor of Mission Hospital. Mark 27/28 is the

letter written by Dr. Bhattacharjee of Ahmedabad to his doctor.

He has further testified that for getting discharge of stool and urine from the injured girl, they had to use catheter and other things for which they spent about Rs.200/-

27. To corroborate the evidence of injuries sustained by the minor victim Habsakhatun, the claimant also examined Dr. Bharatkumar Acharya and relied upon the certificate dated 3.8.1989 issued by Bhagyoday General Hospital, Kadi where the injured was first taken for treatment wherein it is mentioned that Habsakhatun was brought to the hospital on 18.3.1989 at 5.20 PM. A perusal of the certificate shows that the doctor had noticed the following injuries:

(i) Bruises on back and left foot.

(ii) Ecchymosis right hand.

(iii) Tenderness over left sacroiliac joint.

She was treated as outdoor patient and was given primary treatment. She was referred to

orthopaedic surgeon for further treatment. He had also issued reference note dated 18.3.1989 making reference to orthopaedic surgeon for further treatment. Dr. Bharatkumar Sumanchandra Acharya of Bhagyoday Medical hospital, who was examined at Ex.68, at page 106 of the paper book had deposed as per the medical certificate issued by him.

28. The injured girl was thereafter taken to Kalol and from there she was taken to Utkarsh Hospital, Nadiad.

29. To further corroborate the case of the claimant, the claimant also examined Dr. Shantiswarup R. Kshatri of Utkarsh Hospital, Nadiad, at Ex.62, page 101 of the paper book. He had testified that Habsakhatun was brought to the hospital on 18.3.1989 with the history of alleged accident with ST bus at Kadi bus stand. The child had injury on back and right groin. The child was given anti-inflammatory medicine. There were bruises. X-ray was taken which showed crack

fracture of ramus right side. She was feverish and he had also issued certificate which is at page 104 of the paper book. The certificate is dated 25.4.1989. The certificate shows that she was given treatment at Utkarsh Hospital. She was also sent for further treatment and referred to Paediatrician as well as neurosurgeon. He has also made a reference note to Dr. Thakore of Ahmedabad, a neuro-surgeon vide reference note dated 20.3.1989.

30. In order to prove that the injured minor girl sustained traumatic paralysis/paraplegia the claimant had also examined Dr. Balkisan Navinchandra Desai, a neurosurgeon of Ahmedabad, Ex.29, at page 56 of the paper book. He, inter alia, testified that one girl aged about 3 years named Habsakhatun H Momin was examined by him in August 1989. She was unable to move both of her lower limbs and there was loss of bladder and bowel control (passing urine and stool without her knowledge). She had vehicular accident on 18.3.1989. She had normal developed mile stones

prior to the accident. She was walking normally and had no neurological problem according to the General Practitioner doctor who was treating her in minor illnesses. In the last nine months she had been seen and treated by many specialists. Even she had been to Vellore where she was treated by expert neurologists. She had been thoroughly investigated and the experts come to the conclusion that her spinal-cord is dead below D.5-6 level. The day on which she was examined by the doctor, on neurological examination she was found alert, conscious and cooperative. Her cranial nerve and higher functions were normal. She got flaccid paraplegia (paralysis of both lower limbs). Sensations were absent below level of nipples. There was hypotonia of both lower limbs. Muscle power was Gr.0. Deep tender reflexes are absent. There was no control of urinary bladder as well as bowels, means loss of sphincter control of anus- some time there was dribbling of urine. In the opinion of the doctor she got traumatic paraplegia, as a result of the accident. As there was no improvement in last

nine months, in his opinion, her disability is permanent. There was no indication of any surgical intervention. Medically she was only advised passive physiotherapy, bladder care and bowel. Her permanent disability would be about 100% according to Kessler. He had issued the certificate mark 27/27. It did bear his signature and the contents were true and it was produced at Ex.30. In his opinion the sex life of the patient was dead and totally zero. The deposition of this doctor was recorded on 5.6.1991, that is, about 15 months after the accident. This witness was cross-examined at length by the learned advocate for the GSRTC. He denied all the suggestions put to him as regards that the injured was not paraplegic as a result of the accident. In cross-examination also he repeated that as a result of the injuries there were 100% disability to the body as a whole. It would be shocking to note that in para 10 of his evidence, he testified that normally it was not true that generally chances in the child aged 3 years old was less for survival. According to

him, looking to the injury sustained by the patient, she will be burden for parents till her life time. There was no chance to cure the patient. It was not true that chances of survival was short. Her survival depended on the care taken by the parents. He examined the spinal-cord of the patient clinically and neurologically and he had seen the x-rays and reports of treatment. He had issued a medical certificate dated 27.12.1989 which is on record at Ex.30, page 61 of the paper book. On a perusal of the certificate it is seen that he had mentioned everything which he had deposed before the Court in his oral testimony.

31. A feeble attempt was made by Mr. M.D. Pandya, learned advocate for the GSRTC that radiological reports and myelograms issued by Dr. Bharat Shah as well as Dr. P.R. Thakore do not mention about paralysis or paraplegia. According to him, these are standard tests. Therefore possibility that with a view to get huge amount of compensation from GSRTC, false certificate has

been obtained by the claimant cannot be ruled out. It is true that the certificate dated 20.3.1989 issued by Dr. Bharat S. Shah, Consulting Radiologist, shows that X-ray of dorso-lumber spines AP and lateral view was taken and it was noted that mineralization and trabecular pattern of dorsal and lumber spines appear normal. No evidence of compression of dorsal and lumber spines. The doctor concluded that that there was normal radiological examination of dorsal and lumber spines.

32. Similarly certificate dated 20.3.1989 issued by Dr. T.N. Jasani, a Consultant Radiologist is produced at mark 27/10, page 31 of the paper book. He has opined that cranio-cervical junction showed normal appearance. No cranio vertebral anomaly of atlanto-axial dislocation seen. Cervical and dorsal vertebrae showed normal appearance. No fracture, compression or wedging of vertebral bodies seen. Disc spaces are normal. No evidence of disc space narrowing. No paraverterbral abscess seen. Opacity in right

upper lobe, indicate infection.

33. The contention of Mr. Pandya, learned advocate for GSRTC, that the Tribunal has erroneously believed the documents produced by the claimant which are not proved and not exhibited and has wrongly relied upon non-proved and non-exhibited documents for coming to the conclusion that the injured suffered paralytic/paraplegic injuries which have resulted into permanent total disablement, has no substance. It is an admitted fact that the Motor Vehicles Act is a benevolent piece of legislation which has been enacted to award just and reasonable compensation to the victims of road accident and, therefore, according to us, while deciding the claim petition filed by the claimant, it is not necessary for the Tribunal to insist for strict proof of the documents produced by the claimant and the strict proof of Indian Evidence Act is not applicable to the proceedings before the claims Tribunal if the documents produced by the claimants are found to be genuine

and correct. On perusal of the bunch of certificates produced by the claimant, the Tribunal found them to be correct and, therefore, the Tribunal relied upon those certificates. This Court also, on reappraisal of those certificates, found those certificates to be genuine and correct and, therefore, those certificates could be relied upon for coming to the conclusion that the victim girl received serious injuries in the vehicular accident which have resulted into paralysis/paraplegia and resultant permanent total disablement to her.

34. Notwithstanding the aforesaid certificates, there are other evidences also in the form of certificate issued by Vellore Christian Hospital, Tamil Nadu where the injured was taken for further treatment. The hospital has issued certificate dated 29.6.1989. In the said certificate history of complaint was mentioned. Finding was also mentioned. In diagnosis column it was mentioned X-rays were normal no response post tibial SSEP. Upper limbs

normal. Root lesion proximal to lower limbs. In discussion column it was mentioned that this patient had flaccid paraplegia following an accident. Her spinal X-rays and myelograms were normal. There was no response of posterior tibial SSEP. Within five months she did not have any improvement. Clinically it was a complete paraplegia and there was no indication of surgical intervention at that stage. She was advised passive physiotherapy and on discharge she was advised for daily laxatives, bladder and catheter care.

35. There is no reason to disbelieve the certificate issued by the Christian Medical College and Hospital, Vellore, Tamil Nadu. It is pertinent to note that in the discharge certificate issued by Vellore Hospital it was mentioned that there was traumatic paraplegia and there was no indication of surgical intervention at that stage. According to medical science, in many cases it is possible that neurological deficit in both lower limb following

trauma of spinal-cord is possible.

36. In view of the aforesaid oral as well as documentary evidence of the experts it has to be deduced that the minor injured Habsakhatun has on receiving accidental injuries become a traumatic paraplegic which has resulted into permanent disablement and the chances of survival depended on the care taken by her parents.

37. It may be noted that the accident had taken place way back in the year 1989 and the victim was about 3 years old at that time and as per the submission of Mr. BS Patel, learned advocate for the claimant, she is still surviving and is attending her college with the help of her parents who are taking her to college and now she is aged about 21 years and, therefore, it is crystal clear that the family members are taking care of her and therefore she is surviving even today.

38. Therefore, now the question which falls for

determination is as to what amount of compensation should be awarded to the claimant under the head of mental pain, shock and sufferings and loss of amenities and comforts of life.

39. In this connection, so far as the case law about the compensation under the head of mental pain, shock and suffering is concerned, the decisions on this aspect are legion but it is not necessary to recapitulate them here merely to cover the ideal parade of familiar knowledge. However, one can profitably refer the important decisions on this aspect.

40. For determining the figure on the head of mental pain, shock and suffering this Court may resort to the judgment of Pest Control (India) Pvt. Ltd. and another v. Ramanand Devarao Hattangadi, 1990 ACJ 130, wherein the Bombay High Court after considering various judgments of foreign cases, has come to the conclusion that so far as award under the head of mental pain, shock

and suffering i.e., non-pecuniary damage is concerned, they have taken a passage from Halsbury's Laws of England Ed.Vol 12 at page Nos.446 to 1147 on non-pecuniary loss giving pattern of damages and it is provided therein thus:

> “The pattern of damages awarded for pain and suffering and loss of amenities constitute conventional sum which is taken to the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions.”

41. In the above said decision, the Bombay High Court also has made a reference to the decision rendered in the case of Fletcher vs. Autocar & Transporter, 1989 ACJ 99 (CA) England wherein it is held thus:

> “The damages awarded should be such that the ordinary sensible man would not instinctively regard them as either mean or extravagant but would consider them to be sensible and fair.”

42. In the judgment rendered in the case of Pest Control (India) (supra), the Bombay High Court has awarded a sum of Rs.1,00,000/- under the head of pain, shock and sufferings to the injured who was 52 years of age, a practicing lawyer, hospitalized for two and half months and continued the treatment throughout his life suffering from paraplegia below the waist portion with a total permanent disability.

43. This Court also would like to refer the decision rendered in the case of Shekhar Shantaram Dinghe v. Roshan Lal Uday Bhan and others, 1994 ACJ 1115. In this case the Bombay High Court has awarded a sum of Rs.2,10,000/- for pain, shock and sufferings, and loss of amenities of life to the injured person who was a Civil Engineer and whose left arm was amputated because of the injury sustained by him in the vehicular accident.

44. This Court may also make a reference to

the pronouncement of the Apex Court in the case of R.D. Hattangadi v. Pest Control (India) private Limited, reported in 1995 ACJ 366. In the said decision, the Apex Court awarded a sum of Rs.3,00,000/- to the injured towards pain, shock and sufferings and amenities of life (Rs.1,50,000/- under each head) as against Rs.1,00,000/- allowed by the High Court of Bombay. It may be appreciated that the said case was decided by the Apex Court in appeal against the judgment rendered by the Bombay High Court in the case of Pest Control India (Private Limited) (supra) 1990 ACJ 130.

45. Therefore, in view of the oral as well as documentary evidence adduced and produced in the case and in the lime light of the case law discussed herein above and more particularly the law laid down in the pronouncement of the Apex Court in the case of R.D. Hattangadi (supra) which has become the law of the land, this Court is of the opinion that when the injured claimant has become paraplegic and is in neurogenic shock

which can be said to be the very similar injuries suffered by the victim in the case of R.D. Hattangadi (supra) according to us, compensation of Rs.75,000/- under the head of pain, shock and sufferings and Rs.25,000/- under the head of loss amenities of life awarded by the Tribunal do not require any interference by us. On the contrary, it appears to us to be on lower side. According to us, the Tribunal ought to have awarded Rs.1,50,000/- under both these heads i.e., pain, shock and sufferings and for loss of amenities of life.

46. Now the next question is about the special or pecuniary damages to be awarded to the claimant. In this regard, the question would arise as to which would be the items included in the list of pecuniary damages. In this connection, this court would like to quote a few words from the judgment in the case of Sushila Pandy v. New India Assurance Company 1983 ACJ 525 (Allahabad) wherein the Allahabad High Court has very aptly laid down the principles after taking

review of the English and Indian authorities and has set out the principles in the judgment as follows:

> “Pecuniary damages are also known as special damages and are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money. Non-pecuniary damages are those which are incapable of being assessed by arithmetical calculation. Pecuniary damages generally include four sub-heads; (i) expenses incurred by the claimant in respect of injury which may include medical expenses, special diet, cost of nursing or attendant, (ii) loss of earning or profit upto the date of trial (iii) loss of earning capacity which may include incapability in the labour market, loss of earning on account of termination of service or discontinuance of any trade, business of profession and (iv) other material loss which may require any special treatment or aid to the injured or claimant

for the rest of life."

47. Bearing in mind the sub-head under the special head of pecuniary damages, we may now advert to the claim put forth by the claimant in the claim petition. It is not and cannot be disputed that the claimant due to the injuries in the accident has suffered 100% disability and for the last 18 years from the date of the accident she was under the constant medical treatment and required service of attendants daily and therefore has spent substantial amount for the medical expenses and attendant charges and in future also she will require the same for ever. The claimant has claimed substantial amount for medicines and the treatment charges which she has incurred up till now. Looking to the seriousness of injuries there is no reason to disbelieve the evidence of the claimant with regard to medical expenses and attendant charges, for special diet, future medical treatment, etc. Therefore, the amount awarded under different heads appears to be just and reasonable and we do not propose

to interfere with the said award under different heads.

48. Now the last head which is required to be considered is the future loss which is to be incurred by the claimant. It is to be noted that this case is different from the routine accident claim cases. It is true that the injured is surviving even today and is studying in college but the question that would arise is even after her graduation who would give job to a 100% disabled girl. Her future is totally in dark so far as potential and earning capacity is concerned. However, we would not forget that she requires regular diet and that too special nutritious diet, clothing and some indoor entertainment like listening to music, seeing video cassettes on television, etc. On all these counts, the Tribunal considered the future economic loss of her potential earning at Rs.1,000/- per month which does not appear to us on higher side and considering the future economic loss at the rate of Rs.1,000/- per

month the Tribunal has awarded Rs.2,40,000/- under the head of future economic loss by applying 20 years purchase factor. Of course, now in view of the judgment of the Supreme Court, twenty years purchaser factor is on higher side but we cannot forget the fact that the date on which the accident took place and the judgment was delivered, as per the legal position prevailing then there was nothing wrong in giving multiplier of 20 years. Even then, if we apply 15 years multiplier she would be entitled to get Rs.1,80,000/- instead of Rs.2,40,000/- under the head of future economic loss, that is, Rs.60,000/- more has been awarded by the Tribunal under this head. However, since we have found that the Tribunal has awarded less amount under the head of pain, shock and sufferings and loss of amenities of life, which according to us, should have been Rs.1,50,000/- instead of Rs.1,00,000/- as awarded by the Tribunal, we do not disturb this award of Rs.2,40,000/- under the head of future economic loss. If we reduce the future economic loss to Rs.1,80,000/- instead of

Rs.2,40,000/- we will have to enhance the compensation under the head of pain shock and sufferings and loss of amenities of life from Rs.1,00,000/- to Rs.1,50,000/- Therefore, instead of enhancing the amount of compensation under one head and reducing it under the other head, and that too, in spite of doing all these additions and subtractions, there may not be any substantial change in the total amount of compensation awarded to the claimant, we do not deem it necessary to interfere with the impugned award because the total compensation to be awarded to the injured claimant would remain almost the same.

49. Therefore, according to us, the impugned award passed by the tribunal to the extent of Rs.6,12,000/- is just, proper and reasonable and it cannot be termed as punitive to the party liable nor a source of profit to the victim of the accident. By awarding this amount it cannot be said that the victim of the accident is permitted to make fortune out of misfortune and

sympathy was shown for the claimant at the time of calculation of damages nor the award can be said to be extravagant and oppressive. Therefore, according to us, the Tribunal has not committed any illegality in awarding Rs.6,12,000/- by way of total compensation. Therefore, we affirm the said award.

50. So far as awarding interest at the rate of 12% per annum is concerned, according to us, it appears to be on higher side. The accident took place in the year 1989 and today we are in 2007, therefore, if confirm the award granting interest at the rate of 12%, it would cause tremendous burden on GSRTC and hence we propose to reduce the rate of interest from 12% to 7.5% per annum on the awarded amount.

51. Seen in the above context, neither the appeal filed by GSRTC nor the cross-objection filed by the claimant against the impugned award call for interference except qua the award of interest of at the rate of 12% per annum which is

now reduced to 7.5% per annum by this judgment. Therefore, the appeal and cross-objection both lack merit and deserve to be dismissed.

52. For the foregoing reasons, the appeal and cross-objection are dismissed with no order as to costs, with a modification that the rate of interest on the awarded amount shall be 7.5% instead of 12% as awarded by the Tribunal.

53. We are told that this Court vide order dated 30.4.1993 passed in Civil Application No.408 of 1993 filed in this First Appeal had directed that out of the deposited amount, Rs.50,000/- shall be paid to the claimant by issuing account payee cheque and out of remaining amount, after deducting the requisite court fees, 50% thereof shall be invested in fixed deposit as per the order of the Tribunal while 50% amount shall be invested in cumulative fixed deposit on the same terms and conditions. It was further ordered that the claimant be permitted to withdraw periodical interest accruing on non-

cumulative fixed deposit. It was further ordered that for the remaining amount of costs and interest, GSRTC shall give undertaking as stated in the earlier order dated 29.4.1993.

54. In view of the order passed in this First Appeal and Cross-objection, GSRTC is directed to deposit the interest at the rate of 7.5% per annum from the date of application till realization with proportionate costs of the claim petition on the awarded amount of Rs.6,12,000/- within a period of six weeks from today before the concerned Tribunal.

55. On depositing the amount of interest at the rate of 7.5% per annum on the awarded amount with proportionate costs of the petition with the concerned Tribunal, the Tribunal shall prematurely encash the two Fixed Deposit Receipts, one cumulative and another non-cumulative, and the entire corpus i.e., interest, proportionate costs and amount received on encashment of the cumulative and non-cumulative

FDRs, shall be clubbed together and out of the total amount, 10% amount shall be paid to the injured claimant – Habsakhatun by account payee cheque drawn in her favour and remaining 90% amount shall be invested in the name of injured claimant Habsakhatun, as per her choice, in any nationalized bank or Government of India Security or in any Scheme of Post Office, yielding higher rate of interest, initially for a period of five years, with a provision that the injured claimant Habsakhatun shall receive interest on the said amount every month. But she shall not be permitted to prematurely encash the FDR or Security, as the case may be, without prior permission of this Court. However, liberty is reserved to the claimant Habsakhatun to apply to this Court for withdrawal of amount from the investment made in her name, if any financial aid for her education or medical expenses is needed in future.

56. We have passed this order for investment of the major portion of the compensation awarded to

injured claimant Habsakhatun in spite of her having now attained the age of majority, keeping in view the fact that she is totally disabled and also to see that the amount awarded in her favour is not frittered away and the substantial amount of interest she will be receiving on the said deposit every month may take care of the expenses to be incurred by her for the remaining span of her life.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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